

REMARKS

On November 18, 2004, the Examiner issued a Restriction Requirement in the present application. The Examiner indicated that claims 1-10 were drawn to one invention, namely, an air terminal comprising a damper, and claims 11-13 were drawn to a second invention, namely, an air terminal comprising a baffle plate. Applicant respectfully traverses the restriction requirement and hereby requests reconsideration.

The present application is a divisional application based off of its parent application, U.S. Application Serial No. 10/150,266, filed May 17, 2002, of the same title. On April 9, 2003, the Examiner of the parent application, William E. Tapolcai, issued a Restriction Requirement indicating that the application as originally filed contained claims drawn to three different inventions. A copy of the claims as originally filed and a copy of the Restriction Requirement, both of the parent application, are attached hereto for your convenience.

Examiner Tapolcai indicated that claims 15-20 were one group and were drawn to one invention, namely, an air terminal for an air conditioner. The present application is the divisional application that covered claims 15-20. In that regard, claims 1-3 of the present application were claims 15-17 of the parent application. Also, claims 11-13 of the present application were claims 18-20 of the parent application. In other words, it is improper that Applicant should face yet another restriction requirement when the present claims were the result of a previous restriction requirement. All claims in the present application are drawn to an air terminal.

Accordingly, Applicant respectfully requests that the present Restriction Requirement be withdrawn and all 13 pending claims be examined on their merits. However, as

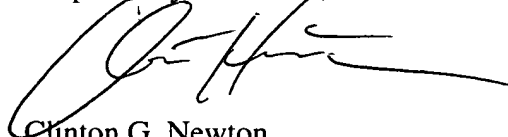
Appl. Serial No. 10/606,085
Amdt. dated December 20, 2004
Reply to Office Action of November 18, 2004

required, Applicant hereby provisionally elects claims 1-10 and has above-amended the claims to reflect the same in the event the Restriction is not withdrawn. If claims 11-13 are withdrawn, Applicant hereby expressly reserves the right to file one or more continuation or divisional applications covering the subject matter of claims 11-13.

If the Examiner believes that a telephone conference will in any way expedite the handling of this case, he is invited to call the number listed below at his convenience.

The Commissioner is hereby authorized to charge any fees, or credit any overpayment, to Deposit Acct. No. 19-2112.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Clinton G. Newton', written over a horizontal line.

Clinton G. Newton
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Enclosures



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/150,266	05/17/2002	Stanley J. Demster	AIRF.96649	1625

7590

04/09/2003

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EXAMINER

TAPOLCAI, WILLIAM E

ART UNIT PAPER NUMBER

3744

DATE MAILED: 04/09/2003

Response Due 5/9/03 ⁷ (FE)

Please find below and/or attached an Office communication concerning this application or proceeding.

AIRF 96649

Office Action Summary

Application No.

10/150,266

Applicant(s)

DEMSTER, STANLEY J.

Examiner

William E. Tapolcai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/24/03
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-14, drawn to an air conditioner apparatus, classified in class 236, subclass 49.3.
 - II. Claims 15-20, drawn to an air terminal for an air conditioner, classified in class 454, subclass 254.
 - III. Claims 21-26, drawn to a supply and return apparatus and method for conditioned air for a room, classified in class 454, subclass 237.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not claim the details of the subcombination. The subcombination has separate utility such as by itself, as a stand-alone air terminal.
3. Inventions I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not recite

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the spacial orientation of the supply and return plenums. The subcombination has separate utility such as by itself, without the control for selecting a duration for a duty cycle or a time period which is dependent on the sensed space condition.

4. Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as by itself, without the spacial orientation of the supply and return plenums. See MPEP § 806.05(d).

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. A telephone call was made to Richard Johnson on March 5, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William E. Tapolcai whose telephone number is (703) 308-2640. The examiner can normally be reached on Mon. - Thurs., 6:30 to 4 and alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise L. Esquivel can be reached on (703) 308-2597. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0975.


William E. Tapolcai
Primary Examiner
Art Unit 3744

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April 9, 2003